

COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO, CITY OF CHULA VISTA, CITY OF IMPERIAL BEACH AND THE UNITED STATES ARMY CORPS OF ENGINEERS REGARDING THE DEVELOPMENT OF A SPECIAL AREA MANAGEMENT PLAN FOR THE OTAY WATERSHED IN SAN DIEGO COUNTY, CALIFORNIA

This Cooperative Agreement ("Agreement") entered into as of this 24 day of May, 2004 is made between the County of San Diego ("County"), City of Chula Vista, City of Imperial Beach ("Cities") and the United States Army Corps of Engineers ("Corps"), Los Angeles District (collectively, the "Parties") pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6300 et seq.).

BACKGROUND

A. The purpose of this Agreement is to establish a collaborative relationship between the County, the Cities and the Corps, to jointly develop comprehensive approaches to conserve and restore important aquatic resources in the Otay River Watershed ("Watershed") in San Diego County and to streamline regulatory compliance under section 404 of the Clean Water Act ("CWA"). The Agreement defines the respective roles and responsibilities of the Parties in undertaking this effort to establish a Special Area Management Plan ("SAMP") that addresses identification, conservation, restoration, and management of the aquatic resources of this Watershed.

B. The Watershed was selected by the Parties because of its ecological significance to the region, its vulnerability to increasing growth and development pressures in the area, and its relationship to regional conservation plans developed under the Natural Communities Conservation Planning ("NCCP") program. The Parties recognize the value of jointly taking steps to ensure proper stewardship and effective management of this resource in a manner that reflects the range of interests potentially affected by this program.

C. The Watershed spans nearly 100,000 acres in the southwestern portion of San Diego County. Extending east to west for 25 miles and reaching laterally about 10 miles, the Watershed consists of short streams, broad valleys, and a coastal plain (mesa). The major tributaries to the Otay River include Dulzura and Jamul Creeks. The Watershed is characterized by a rich assortment of vegetative communities, including riparian and coastal sage scrub, woodlands, chaparral, native and annual grassland, freshwater marshes, coastal salt marshes, saltpan, vernal pools and open waters.

D. The Watershed also supports a remarkable diversity of plant and animal species, among the highest concentration in North America, many of which require the protection of state and federal endangered species laws. Among the rare and sensitive species in the Watershed are the Least Bell's vireo, Southwestern willow flycatcher, Cooper's hawk, Yellow warbler, Green heron, Black-shouldered kite, Yellow-breasted chat, California least terns, and a variety of breeding shore and marine birds. In addition, the Otay Mesa vernal pools support several unique and endangered species, including the San Diego fairy shrimp, Otay Mesa mint, little mousetail and spreading navarretia.

E. The land within the Watershed is owned by both public and private landowners. Much of the private holdings are within the Otay Ranch development project. Local, state, and federal agencies manage large areas of the Watershed, including land within the Bureau of Land Management's Wilderness Area and the National Wildlife Refuge as well as properties acquired and managed by California Department of Fish & Game, the County and the Cities.

F. San Diego County has been engaged for the past ten years in developing and implementing a landmark plan to protect its diverse and sensitive species and natural communities. On October 22, 1997, the County Board of Supervisors approved its Multiple Species Conservation Program ("MSCP") Subarea Plan, as did the San Diego City Council on March 18, 1997 and the Chula Vista City Council on October 17, 2000 approved their draft MSCP plan, providing for the long-term conservation of a range of rare and endangered species and their habitats throughout the southern portion of the County, including several aquatic species in the Watershed. The scope of this planning effort, however, did not include a comprehensive approach to the preservation of wetlands and other aquatic resources.

G. Recognizing the need to move forward with comprehensive planning for these aquatic resources, the County and the City of San Diego jointly formed a Wetlands Task Force to identify and consider innovative approaches to enhance the protection and management of wetlands and streamline wetlands permitting under section 404 of the CWA. The Wetlands Task Force selected the Watershed for a pilot study and committed funding and other resources to evaluate innovative approaches, including SAMPs, to meet these objectives.

H. As an initial step in this effort, the Corps worked with the Wetlands Task Force to begin to identify potential mechanisms and strategies for the conservation of these aquatic resources. The development of a SAMP was one such approach discussed by the group. In response, the Corps prepared a draft "Scope of Work" for the preparation of a SAMP with the understanding that any steps toward the development of a SAMP would be assessed on an ongoing basis by the participants. Many of the tasks identified in the Scope of Work are intended to help establish baseline information and analysis about the Watershed and, as such, will be part a work plan carried out pursuant to this Agreement.

I. The Parties intend for this planning effort to achieve the following objectives:

- Preservation, restoration, and enhancement of aquatic resources in the Watershed in a manner that ensures no net loss of functions and values, improves water quality, reduces flood hazards and provides for the long-term management of the aquatic ecosystem;
- Development of a streamlined, predictable and cost efficient approach to local, state and federal regulatory permitting as it relates to aquatic resources;
- Accommodation of reasonable economic development not incompatible with conservation objectives;
- Targeted acquisitions of land and conservation easements from willing sellers to advance the preservation of important resources within the Watershed through local, state, federal, and private sources of funding.

J. The Corps recognizes that the County and the Cities are pursuing a comprehensive planning program for the Otay Watershed for a range of environmental concerns of which the conservation of aquatic resources described in this Agreement is but one part. The County and the Cities anticipate the development of plans for the Watershed that will address issues concerning water quality, storm water management, recreational needs, and other relevant issues as part of this effort. To the extent that information, data and analysis generated as part of this effort will be beneficial to the development of a multi- faceted approach to Watershed needs, the Corps will work cooperatively with the County and the Cities to provide and share such information.

K. The Parties anticipate and encourage the participation in this planning process of other jurisdictions with land use authority over areas within the Watershed. As these jurisdictions choose to participate, they will be added as signatories to this Agreement.

Now, Therefore, the Parties hereby agree to the following:

II. SAMP DEVELOPMENT

A. Role of the Parties. The Parties to this Agreement will collaborate on the development and implementation of strategies and approaches designed to achieve the goals envisioned by this Agreement. The County, the Cities, and, subject to the availability of funding and budgetary priorities, the Corps will each assign a project manager to jointly coordinate/supervise development of the SAMP. Initially, the Parties will have the following specific responsibilities:

- Army Corps of Engineers. The Corps will assume the role of the lead federal agency for developing and implementing a conservation and management strategy for the Watershed. The

role of the Corps will include participation in an Executive Committee and Coordination Team to provide policy guidance and technical and regulatory expertise to the process. The Corps will manage the development of data and information, studies and analysis, including aquatic resource delineations and functional assessments.

- County and other Participating Jurisdictions. The County will assume responsibility for overseeing the management of the SAMP program on behalf of the participating jurisdictions. The local participating jurisdictions will assist the Corps, upon mutual agreement, in gathering data and information and undertaking study and analysis of the resources of the Watershed necessary to provide a scientifically sound basis for an aquatic resources conservation program. The jurisdictions may also develop information to supplement and support the planning effort. The jurisdictions will work with the Corps to assess the various alternative approaches and strategies that may be implemented to achieve comprehensive conservation of the Watershed.

B. Management Structure. To maintain ongoing involvement and coordination among the Parties and other supporting state and federal agencies with jurisdiction over aquatic resources, the Parties to this Agreement will establish an Executive Committee and a Coordination Team with the following roles and responsibilities. The County will assume the lead role in convening meetings of these committees:

- Executive Committee. Given the innovative and complex nature of this effort, as well as its relationship to the County's overall program for the Watershed, the Parties agree to form and participate in a senior-level Executive Committee. The Executive Committee will include the District Engineer for the Corps and equivalent-level managers from other supporting agencies as well as senior managers from the jurisdictions with decision-making authority over matters to be addressed through this planning program. The Committee will meet on an "as needed" basis to make determinations about policy, budget and other issues and to bring resolution to any issues brought forward by the Coordination Team. Membership will be solicited of agencies with an interest in Watershed issues, including the following:

U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
Bureau of Land Management
California Department of Fish & Game
Regional Water Quality Control Board

- Coordination Team. The Coordination Team will consist of representatives from state and federal agencies and the participating jurisdictions, including designated project managers, who have day-to-day responsibility for the management of this SAMP. The Team will meet on a regular basis to discuss overall SAMP objectives and strategies, scientific and technical needs and requirements, budget and funding, schedules and milestones and other matters concerning the development and implementation of approaches to the conservation of the Watershed. In addition, the Parties intend that informal discussions among the Team will occur on a frequent basis to ensure ongoing progress.

C. Phased Development of the SAMP. The Parties will proceed with a phased approach to the planning effort. In identifying the elements of each phase, the Parties will seek to consolidate activities that collectively will produce outcomes of independent value and utility in achieving the stated objectives.

- Phase I. The planning effort will begin with the development of information and data, and studies and analysis of the resources comprising the Watershed. Phase I will include a comprehensive planning level identification and delineation of waters of the United States, including wetlands, followed by functional assessments to determine the integrity of the aquatic resources. Phase I will also include evaluation of cultural resources, and determination of baseline conditions in anticipation of the preparation of environmental review under NEPA and CEQA. At the completion of Phase I, a final written report, including maps and GIS databases, will be prepared. The report will include a description of methodologies; discussion and characterization of each of the regional

wetland subclasses; summary of field data; and descriptions of assessment indicators, metrics, and indices;

- Subsequent Phases. Upon nearing completion of Phase I of the SAMP, the Parties will evaluate the studies produced, and confer on the nature and scope of subsequent phases, if any, to be undertaken. Any subsequent phase will be oriented toward achieving the goals of aquatic resource conservation and regulatory permitting. The development of a SAMP would require a number of additional steps, including identification and analysis of alternatives; approaches to avoidance, minimization, and mitigation for unavoidable losses of waters of the United States; plans for restoration of resources; NEPA and CEQA compliance; and an aquatic resources management program. It is the intention of the Parties that an outcome of the SAMP will be the issuance of permits for those covered activities that are in full compliance with the requirements of section 404 of the CWA.

D. Public Participation. The Parties recognize the value of developing any such plans through a participatory process that ensures ample opportunity for public input and comment. The participants will convene a "Working Group," consisting of responsible organizations and individuals in the region who have an interest in the outcome of this specific effort. The Parties will jointly establish criteria for which membership will be determined. The Working Group will meet on a regular basis and will be chaired by the Corps and the County. In addition, during the course of the planning effort, public workshops/meetings will be held to inform interested stakeholders of the status and progression of the program and to obtain comments, feedback and individual recommendations. It is anticipated that information provided by members of the group will be furnished individually and not on a collective basis.

III. PROGRAM FUNDING AND IMPLEMENTATION

A. Budget and Funding. The Parties will jointly develop a work plan and budget for each fiscal year for the life of the planning effort. As part of this process, the Parties will reach agreement on cost-sharing responsibilities among the participants for the various elements of the program. In addition, the Parties will identify and work to secure public and private sources of funding to develop and implement a plan. With respect to the activities contemplated by Phase I, the Parties agree that funding will be provided in the following manner:

- Phase I. The County and the cities of San Diego and Chula Vista agree to jointly contribute a total of \$250,000 (\$150,000 from the County, \$75,000 (expires June 2004) from the City of San Diego, and \$25,000 from Chula Vista) to help fund Phase I studies, analyses and related tasks that will be carried out by the participating jurisdictions. In addition, the Parties agree that a portion of the \$500,000 federal appropriation for fiscal year 2001 and the \$1 million appropriation for fiscal year 2002 to the Corps for Watershed planning purposes in San Diego County should be directed to these Phase I tasks as well. The Parties will work to develop a work plan that details the tasks and assigns responsibilities to the participants for the various program elements;
- Subsequent Phases. Upon agreement on the nature and scope of subsequent phases, the Parties will utilize any remaining funds to jointly establish and implement a work plan based on available resources. Future contributions among the Counties and the Cities, if necessary, will be determined during the normal budget cycles of each of the jurisdictions. In addition, the Parties will collaborate on efforts to obtain additional funding, if necessary, to complete these subsequent phases.

B. Clean Water Action Plan. Pursuant to the federal Clean Water Action Plan's "Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management," the Parties to this Agreement will work with federal agencies to ensure coordination and collaboration between federal efforts underway consistent with this policy and the efforts contemplated by this Agreement. If appropriate, formal agreement may be entered into to solidify and clarify these relationships. In addition, in the event that the County develops a local Action Plan for the Watershed pursuant to this federal program, the Corps will provide the County with technical assistance in that effort.

C. Upon provision of 30 days advanced written notice to all of the other signatories, any party may withdraw from this Agreement. If the County or any of the Cities withdraws from this Agreement after the participating jurisdictions have jointly reached agreement on cost-sharing responsibilities, the jurisdiction's withdrawal shall not relieve it from its obligation to pay its full fair share of those costs as approved by each public agency during the normal budget process for each jurisdiction.

IV. REGULATORY ACTIVITIES

A. The SAMP will be designed to provide the basis for regulatory permitting under section 404 of the CWA for a variety of ongoing and future activities occurring within the Watershed. Such activities may include, but not be limited to, development and maintenance of public and private infrastructure projects, including storm water management facilities, and the construction of other public and private development projects. Permits that may be supported by the SAMP include Regional General Permits, Letters of Permission, regionally conditioned Nationwide Permits, and standard individual permits.

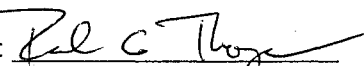
The Parties recognize that nothing in this Agreement shall obligate the Corps to issue permits for activities proposed in this Agreement; rather, permits will be issued only after full compliance with all applicable statutory and administrative requirements.

V. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties. No party is relying on any other representation, written or oral. No term or provision of this Agreement may be changed, waived, discharged or terminated unless the same be in writing, signed by all of the Public Agencies.

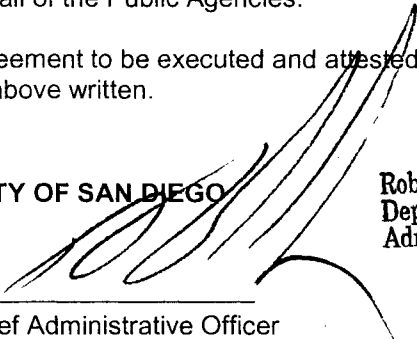
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the date first above written.

UNITED STATES ARMY CORPS OF ENGINEERS

By: 
Richard G. Thompson
Colonel, US Army
District Engineer

Dated: 5/24/04

COUNTY OF SAN DIEGO

By: 
Chief Administrative Officer

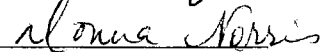
Dated: 3/24/04

Robert R. Copper
Deputy Chief
Administrative Officer

CITY OF CHULA VISTA

By: 
Mayor

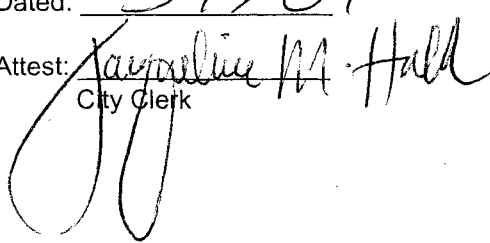
Dated: 18 February 2004

Attest: 
City Clerk

CITY OF IMPERIAL BEACH

By: 
Mayor

Dated: 3-17-04

Attest: 
City Clerk